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Attorney for MICHAEL D. McGRANAHAN, Trustee

**THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

In re:
JIMMY DON CARSON and LISA ANN
CARSON,

Debtors.

SSN#: XXX-XX-9333; SSN#: XXX-XX-8595
7087 E. Highway 26
Stockton, CA 95215

Case No.: 04-31355-D-7

DC NO.: MGO-3

Chapter 7

Date: January 11, 2005

Time: 9:30 a.m.

Place: 501 I Street, 6th Fl.
Courtroom 34

Sacramento, CA 95814
Judge: Hon. Thomas C. Holman

**TRUSTEE'S MOTION FOR AUTHORITY TO
SELL PERSONAL PROPERTY (NOTE)**

Michael D. McGranahan, Chapter 7 Trustee ("Trustee") of the Estate of JIMMY DON CARSON and LISA ANN CARSON ("Debtors"), hereby respectfully requests Authority to Sell Personal Property, as follows:

1. A Voluntary Petition was filed on April 28, 2003 as a Chapter 7 case. Trustee was duly appointed Chapter 7 Trustee of the Estate of the Debtors on April 28, 2003.

2. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1334 and 157.

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TRUSTEE'S MOTION FOR
AUTHORITY TO SELL. . .

1 3. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (N), and (O). This Motion
2 is brought pursuant to 11 U.S.C. § 363(b), and Fed.R.Bankr.P. Rules 2002(a)(2) and 6004.

3 4. By this Motion, the moving party requests that the provisions of Fed.R.Bankr.P.
4 Rule 6004(g) be waived so that the sale is not subjected to the ten day stay.

5 5. Among the assets of this Estate is a Security Agreement and Promissory Note
6 ("Note"), whereby Debtors are listed as the beneficiaries and the borrowers are Maria Elena
7 and Jaime Torres. ("Borrowers"). A true and correct copy of the Note is being filed
8 concurrently herewith as Exhibit "A," and is incorporated herein by reference.

9 6. The Note is dated March 26, 2002, and has a face value of \$120,000. The Note is
10 secured by various fixtures and equipment of Borrowers' grocery store known as Hwy 26
11 Quick Stop at 11225 E. Highway 26 in Stockton, as fully set forth in the Note. A true and
12 correct copy of the UCC Financing Statement filed September 9, 2004, is being filed
13 concurrently herewith as Exhibit "B," and is incorporated herein by reference.

14 7. Currently, the remaining balance of the Note is about \$76,065.10.

15 8. Cedarcrest Capital, LLC has made an offer to purchase the Estate's interest in the
16 Note for a total of \$51,200. A true and correct copy of the offer is being filed concurrently
17 herewith as Exhibit "C," and is incorporated herein by reference.

18 9. The Note shall be sold "As Is."

19 10. The offer was based on the remaining balance of the Note, and the anticipated cash
20 flow from the Note, as of November 22, 2004. In the event that principal payments are made
21 to Trustee between November 22, 2004, and the consummation of the sale of the Note, such
22 payments will be remitted to the successful buyer of the Note. Terms of the sale are set forth
23 in the Agreement for Sale of Estate's Interest in Note, which is being filed concurrently
24 herewith as Exhibit "D," and incorporated herein by reference.

25 11. Buyer has made a deposit of \$5,120 to Trustee. The deposit becomes non-
26 refundable upon the filing date of Trustee's Motion for Authority to Sell Personal Property
27 (Note), subject to being refunded only if Buyer is not the successful bidder for the Note. The
28 remaining balance shall be due and payable in cash or cash equivalent no later than five days

1 after the Bankruptcy Court's entry of an order approving the sale of the Note.

2 12. The sale is subject to approval by the Bankruptcy Court, and will be subject to
3 higher and better bids in increments of at least \$1,000 made at the hearing. The following
4 sets forth the requirements for any party desiring to submit a bid:

- 5 • Contact the Trustee by phone at 1-209-524-1782, or by mail at P.O. Box 5018,
6 Modesto, CA, 95352-5018, to be pre-qualified. Included in such pre-qualification
7 is the requirement that each potential bidder obtain and execute an Agreement
8 for Sale of Estate's Interest in Note, and make a cash or cash equivalent deposit
9 of \$5,120 prior to the hearing date;
- 10 • Make bids for all cash and be able to make full payment of the remaining
11 balance in cash or cash equivalent no later than five days after the Bankruptcy
12 Court's entry of an order approving the sale of the Note;
- 13 • Any party wishing to submit a bid and who has been pre-qualified shall appear in
14 person or by telephone at the hearing. However, any party desiring to make a
15 telephonic court appearance must first confirm that such appearance is available
16 for this matter and shall have full responsibility to schedule the matter in
17 accordance with applicable court procedures. For more information regarding
18 telephonic appearances, please refer to the Bankruptcy Court's official web site
19 at <http://www.caeb.uscourts.gov/> (click Court Calendars-Procedural Information-
20 Telephonic Court Appearance Through Court Conference Center), or call Court
21 Call at 1-866-582-6878.

22 13. Trustee has considered any tax implications of the sale, and has determined that
23 there will be no adverse income tax consequences from the sale.

24 14. There are no contingencies to the offer other than as set forth herein.

25 15. The Note was posted on the National Association of Bankruptcy Trustees (NABT)
26 website and several investors made inquiries and offers. The purchase price is fair and
27 reasonable given the nature and use of the assets and the circumstances of this sale. The
28 Trustee believes that a sale of the Personal Property is in the best interests of the Estate and

1 its creditors.

2 16. The Trustee asserts that good business judgment supports the proposed sale.

3
4 WHEREFORE Trustee prays:

5 A. That the Court issue an order authorizing the sale of the Personal
6 Property, to Buyer or nominee, or to the highest bidder pursuant to the procedure requested
7 herein, on the terms and conditions described above and in the Agreement for Sale of
8 Estate's Interest in Note;

9 B. For an order authorizing the sale of the Personal Property, with the sale
10 proceeds to be held with other funds of the Estate pending further order of this Court;

11 C. For an order authorizing Trustee to execute any and all documents
12 reasonably necessary to effectuate the sale of the Personal Property;

13 D. For the ten day stay provision of Fed.R.Bankr.P. Rule 6004(g) to be
14 waived; and

15 E. For such other and further relief as the Court deems just and proper.

16
17 Dated: 12-14-04

OLEKSA LAW OFFICE, P.C.

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19 By: 

20 Michelle G. Oleksa,
21 Attorney for Trustee
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